

**CHAPTER 10 – SUBSIDIZED CHILD CARE RULES**  
**Effective March 1, 2019**

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## SECTION .0100 - IDENTIFYING AND GENERAL INFORMATION

### 10A NCAC 10 .0101 SCOPE

The rules in this Chapter shall apply to child care facilities that participate in the Subsidized Child Care Assistance Program.

*History Note: Authority G.S. 143B-10; 143B-153; S.L. 1985, c. 757, s. 155(q);  
Eff. October 26, 1979;  
Amended Eff. April 1, 2001; February 1, 1996; July 1, 1990; February 1, 1986;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff.  
March 1, 2016;  
Amended Eff. March 1, 2019.*

### 10A NCAC 10 .0102 DEFINITIONS

In addition to the terms defined in G.S. 110-86(2), (3), (4a), (6), (7), and (8), the following definitions shall apply to this Chapter:

- (1) "Child with special needs" means:
  - (a) a child who is determined by the Division of Public Health, Children's Developmental Services Agency, to be developmentally delayed or have an established condition pursuant to 10A NCAC 43G .0110, incorporated by reference including subsequent amendments. A copy of the Rule can be found at no cost at <http://reports.oah.state.nc.us/ncac/title%2010a%20%20health%20and%20human%20services/chapter%2043%20%20personal%20health/subchapter%20g/10a%20ncac%2043g%20.0110.pdf>;
  - (b) a child who is determined by the local educational agency (LEA) to have a disability as defined in G.S. 115C-106.3; or
  - (c) a child who is determined to be a child with special needs by a Local Managing Entity –Managed Care Organization (LME-MCO) as defined in G.S. 122C-3(20b) and (20c).
- (2) "Director" means the Director of the Division of Child Development and Early Education.
- (3) "Division" means the Division of Child Development and Early Education, Department of Health and Human Services, located at 333 Six Forks Road, Raleigh, North Carolina 27609.
- (4) "Foster parent" means anyone other than a child's parent or legal custodian who is providing full time care for a child who is in the custody of a North Carolina county department of social services.
- (5) "Funds" means all state and federal funds appropriated and otherwise made available to the Department of Health and Human Services that are administered by the Division of Child Development and Early Education for the Subsidized Child Care Assistance Program.
- (6) "Homeless children" is defined in section 725(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), incorporated by reference including subsequent amendments and editions. A copy of the Act can be found at <https://www.gpo.gov/fdsys/pkg/FR-2016-03-17/pdf/2016-06073.pdf>.
- (7) "Local Purchasing Agency" means the local agency responsible for administering the Subsidized Child Care Assistance Program.
- (8) "Market Rates" means the child care subsidy market rates set forth in the annual appropriations act enacted by the General Assembly.
- (9) "NC FAST" means the electronic integrated case management system developed and managed by the North Carolina Department of Health and Human Services.

- (10) "Owner" means any person with a five percent or greater equity interest in a child care facility.
- (11) "Private Agency" means a for profit or non-profit non-governmental entity.
- (12) "Provider" means the owner of a child care center or family child care home.
- (13) "Recipient" means the parent or responsible adult approved for subsidized child care assistance pursuant to Section .1000 of this Chapter.
- (14) "Recipient Fee" means that portion of an operator's payment that is paid to the operator by a recipient approved for subsidy assistance.
- (15) "Subsidized Child Care Assistance Program" means the North Carolina program to assist eligible families in paying the cost of child care services.
- (16) "Supplemental Payment" means payment or reimbursement by the Division for additional expenses incurred by the operator to care for a child with special needs.

*History Note: Authority G.S. 143B-153(2a);  
Eff. February 1, 1986;  
Amended Eff. June 1, 2016; December 1, 2011; April 1, 2001; February 1, 1996;  
Readopted Eff. March 1, 2019.*

## **SECTION .0200 - REQUIREMENTS FOR THE PURCHASE OF CHILD CARE**

### **10A NCAC 10 .0201    APPLICABILITY**

*History Note: Authority G.S. 143B-153(2a);  
Eff. October 26, 1979;  
Amended Eff. April 1, 2001; January 1, 1987; April 1, 1985;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff.  
March 1, 2016;  
Repealed Eff. March 1, 2019.*

### **10A NCAC 10 .0202    PAYMENT RATES**

*History Note: Authority G.S. 143B-153(8)a;  
Eff. January 1, 1987;  
Amended Eff. April 1, 2001; August 1, 1994; July 1, 1990;  
Repealed Eff. March 1, 2019.*

### **10A NCAC 10 .0203    PAYMENT RATES FOR SUBSIDIZED CHILD CARE**

(a) With the exception of Centers that are certified as developmental day centers by the Division, the payment rates for child care facilities shall be limited to the market rate or the child care facility's private rate, whichever is lower.

(b) For centers that are certified as developmental day centers by the Division of Child Development and Early Education and that serve children who meet the definition of special needs set forth in 10A NCAC 10 .0910, the following shall apply:

- (1) payment rates for children with special needs served in developmental day centers shall be calculated by deducting the total revenues per child per month from the total costs per child. That rate shall then be multiplied by the current inflation percentage provided by the Office of State Budget and Management;
- (2) payment rates for typically developing children served in developmental day centers shall exclude those costs associated exclusively with serving children with special needs; and
- (3) payment rates for children with special needs and typically developing children served in developmental day centers shall be calculated every two years and shall be implemented as State and federal funding allows.

(c) A facility approved for participation in the Subsidized Child Care Assistance Program that provides care to children with special needs, as defined in 10A NCAC 10 .0910, that is not a certified developmental day facility shall be paid a supplement to the facility's approved rate, subject to available funding, as follows:

- (1) the facility shall submit a request to the Local Purchasing Agency for approval for a supplemental payment;
- (2) the supplemental payment shall be based on additional documented costs incurred by the facility in serving the child with special needs, such as learning materials, equipment, and additional staff for one-on-one care;
- (3) the costs shall be determined by the Local Purchasing Agency and the facility based on the plan developed to meet the child's individual needs; and
- (4) the Local Purchasing Agency shall submit requests for all one-time supplemental payments in excess of one thousand dollars (\$1,000) and all recurring supplemental payments in excess of three hundred dollars (\$300.00) to the Division. The Division shall approve all requests that meet the child's development needs. All other supplemental payments shall be approved by the Local Purchasing Agency.

- (d) Payment rates for part time care shall be prorated according to the number of hours the child is scheduled to attend the child care facility.
- (e) Recipient fees imposed in accordance with the annual appropriations act shall be subtracted from the facility's payment rate to determine the State payment amount for an individual child.
- (f) Subsidized Child Care Assistance funds shall not be used to pay for services provided by the Department of Health and Human Services, Division of Public Health or the Department of Public Instruction, Division of Exceptional Children's Services for that portion of the service delivery costs that are reimbursed by the Division of Public Health or Department of Public Instruction.

*History Note: Authority G.S. 143B-153(8)a; 143B-153(2a);  
Eff. January 1, 1987;  
Amended Eff. March 1, 2012; April 1, 2001; February 1, 1996; December 1, 1992; July 1, 1990;  
Readopted Eff. March 1, 2019.*



## **SECTION .0300 - SUBSIDIZED CHILD CARE ASSISTANCE PROGRAM REQUIREMENTS**

### **10A NCAC 10 .0301 DEFINITION OF FUND**

*History Note: Authority G.S. 143B-153(2a); S.L. 1985, c. 479, s. 95-97;  
Eff. October 26, 1979;  
Temporary Amendment Eff. July 1, 1982, for a period of 120 days to expire on October 28, 1982;  
Legislative Objection Lodged Eff. July 20, 1982;  
Amended Eff. April 1, 2001; February 1, 1996; February 1, 1986; August 1, 1982;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016;  
Repealed Eff. March 1, 2019.*

### **10A NCAC 10 .0302 DEFINITION OF SERVICES**

### **10A NCAC 10 .0303 ELIGIBILITY**

### **10A NCAC 10 .0304 FEES**

### **10A NCAC 10 .0305 PROGRAM POLICIES AND STANDARDS**

*History Note: Authority G.S. 143B-153; 143B-153(2a);  
Eff. October 26, 1979;  
Amended Eff. July 1, 1980;  
Temporary Amendment Eff. July 1, 1982, for a period of 120 days to expire on October 28, 1982;  
Legislative Objection Lodged Eff. July 20, 1982;  
Amended Eff. April 1, 2001; February 1, 1996; July 1, 1990; April 1, 1987; February 1, 1986; July 1, 1983; August 1, 1982; July 1, 1980;  
Expired Eff. April 1, 2016 pursuant to G.S. 150B-21.3A.*

### **10A NCAC 10 .0306 ALLOCATION**

*History Note: Authority G.S. 143B-153(2a);  
Eff. October 26, 1979;  
Amended Eff. April 1, 2001; July 1, 1990; February 1, 1986; April 1, 1985;  
Repealed Eff. March 1, 2019.*

### **10A NCAC 10 .0307 PAYMENT**

Operators shall enter accurate attendance information, as defined in 10A NCAC 10 .0602(b), into the NC FAST Provider Portal no later than the fifth day of the month for the preceding month's attendance in order to receive payment for services provided by the operator.

*History Note: Authority G.S. 143B-153(2a);  
Eff. October 26, 1979;  
Amended Eff. April 1, 2001; July 1, 1990; February 1, 1986; April 1, 1985;  
Readopted Eff. March 1, 2019.*

**10A NCAC 10 .0308    SANCTIONS AND APPEALS FOR FRAUDULENT MISREPRESENTATION**

(a) The local purchasing agency shall impose sanctions for fraudulent misrepresentation when a person, whether a provider or recipient of child care subsidies, or someone claiming to be a provider or recipient of child care subsidies, does the following:

- (1) With the intent to deceive, makes a false statement or representation regarding a material fact, or fails to disclose a material fact; and
- (2) As a result of the false statement or representation or the omission, obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another person.

(b) The local purchasing agency shall impose the following sanctions for fraudulent misrepresentation in addition to requiring the recipient or provider to repay the amount of child care subsidy for which he or she is ineligible to receive:

- (1) After the first incidence of fraudulent misrepresentation by a recipient, the recipient shall be ineligible to receive subsidized child care services until overpayment is recouped in full or the local purchasing agency shall enter into a repayment agreement with the recipient if the recipient so desires;
- (2) After the second incidence of fraudulent misrepresentation by a recipient, the recipient shall be ineligible to participate in the subsidized child care program for three months; and
  - (A) shall repay the overpayment in full; or
  - (B) the local purchasing agency shall enter into a new repayment agreement with the recipient if the recipient so desires;
- (3) After the third incidence of fraudulent misrepresentation by a recipient, the recipient shall be permanently ineligible to participate in the subsidized child care program and shall repay the overpayment in full;
- (4) After the first incidence of fraudulent misrepresentation by a provider, the provider shall not be paid with subsidized child care funds for any new children who enroll in the provider's program for 12 months; and
  - (A) the provider shall repay the overpayment in full; or
  - (B) the local purchasing agency shall enter into a repayment agreement with the provider if the provider so desires; and
- (5) After the second incidence of fraudulent misrepresentation by a provider, the provider shall repay the overpayment in full, shall be permanently ineligible to participate in the subsidized child care program, and shall not be reimbursed for any services provided to children enrolled in the provider's program from the date of notification of sanction in accordance with G.S. 150B-23(c).

(c) If a recipient or provider enters into a repayment agreement and fails to comply with terms of that agreement, eligibility to participate in the subsidized child care program shall cease until repayment is made in full or the recipient or provider and the local purchasing agency agree to modify the repayment agreement.

(d) Notwithstanding Subparagraphs (b)(4), (5), and (6) of this Rule, the recipient or provider shall be permanently ineligible to participate in the subsidized child care program if:

- (1) the total dollar amount of the fraudulent misrepresentation exceeds ten thousand dollars (\$10,000); or
- (2) the recipient or provider is convicted of fraudulent misrepresentation pursuant to G.S. 110-107.

(e) Sanctions pursuant to this Rule shall be effective 10 days from the date of notice of the sanction. Appeal of a sanction shall not stay the termination of payments under this Rule.

(f) A child care provider may appeal any sanction imposed in Paragraph (b) of this Rule pursuant to 10A NCAC 10 .0311 and 10A NCAC 10 .0312. A recipient may appeal any sanction imposed in Paragraph (b) of this Rule by following the appeals procedures pursuant to G.S. 108A-79.

- (g) When a court of competent jurisdiction finds a recipient or provider guilty of fraudulent misrepresentation pursuant to Subparagraph (d)(2) of this Rule, the sanction imposed is not subject to appeal under this Section.
- (h) Nothing in this Rule shall be construed as limiting child care services pursuant to 10A NCAC 10 .0906.

*History Note: Authority G.S. 143B-153;  
Eff. April 1, 2001;  
Amended Eff. December 1, 2011.*

#### **10A NCAC 10 .0309 CORRECTION OF OVERPAYMENTS AND UNDERPAYMENTS**

- (a) For purposes of this Rule, "agency" shall mean the Local Purchasing Agency or the Division.
- (b) An overpayment made to an owner as a result of an inadvertent error by the agency or the operator shall be recouped by withholding the amount overpaid from monies due to the owner for services provided pursuant to the state's Subsidized Child Care Assistance Program in an amount not to exceed 20 percent of each payment to the owner.
- (c) Should the owner cease to participate in the Subsidized Child Care Assistance Program before the overpayment is fully repaid, the remaining monies shall be recouped by:
- (1) Repayment agreement made with the Local Purchasing Agency; however, the Local Purchasing Agency shall prosecute the owner for failure to make timely payments as required to comply with the terms of the agreement;
  - (2) Involuntary repayment by pursuing court action; or
  - (3) Wage garnishment as permitted by law.
- (d) An overpayment made to an owner as a result of fraudulent misrepresentation by the recipient or owner shall be recouped by:
- (1) Withholding up to the entire amount overpaid from monies due to the owner for services provided pursuant to the state's Subsidized Child Care Assistance Program;
  - (2) Repayment agreement made with the Local Purchasing Agency; however, the Local Purchasing Agency shall prosecute the owner for failure to make timely payments as required to comply with the terms of the agreement;
  - (3) Involuntary repayment by pursuing court action; or
  - (4) Wage garnishment as permitted by law.
- (e) An underpayment made due to agency or owner error shall be corrected in the Subsidized Child Care Assistance Program records and by remitting payment to the owner within 30 days of discovery of the error, but in no event shall an underpayment be corrected more than 90 days from the date of the underpayment unless the owner was unaware of the underpayment because the director or other person having primary responsibility for operation of the child care facility failed to notify the owner. In no event shall the agency correct an underpayment more than one year from the date of the underpayment.
- (f) Appeals pursuant to this Rule shall be in accordance with 10A NCAC 10 .0311 and 10A NCAC 10 .0312.

*History Note: Authority G.S. 143B-153;  
Eff. April 1, 2001;  
Amended Eff. December 1, 2011;  
Readopted Eff. November 1, 2018.*

#### **10A NCAC 10 .0310 REQUIREMENTS FOR THE ADMINISTRATION OF THE SUBSIDIZED CHILD CARE ASSISTANCE PROGRAM**

- (a) Each Local Purchasing Agency shall maintain records of program administration, including recipient records documenting eligibility and ongoing service, and provider records related to investigations of fraudulent misrepresentation, sanctions, and noncompliance with program requirements. These records shall be retained in accordance with most recent Records Retention and Disposition Schedule Spreadsheet

issued by the Office of the Controller, North Carolina Department of Health and Human Services or until all audits begun within the retention period are complete, whichever is longer. The Records Retention and Disposition Schedule Spreadsheet is incorporated by reference, including subsequent amendments and editions, and is available free of charge at <https://www2.ncdhhs.gov/control/retention/retention.htm>.

(b) Each Local Purchasing Agency that administers funding for the State's Subsidized Child Care Assistance Program shall provide records of program administration upon request for review by local, State, or federal agency representatives.

(c) The Division shall require the Local Purchasing Agency to repay funds not spent in accordance with applicable State or federal regulations.

(d) Each Local Purchasing Agency that administers the State's Subsidized Child Care Assistance Program and also owns and operates a child care facility receiving Subsidized Child Care Assistance Program funds shall develop and implement a conflict of interest policy that shall include provisions for:

- (1) parental choice of child care facility for recipients of subsidized child care; and
- (2) separate management of the Subsidized Child Care Assistance Program and the child care facility owned or operated by the agency.

(e) Operators enrolled in the Subsidized Child Care Assistance Program shall maintain all records and forms for a period of three years or until all audits continued beyond the three-year period are completed by local, State, or federal officials. Program records and forms shall be maintained at the location of the child care facility and shall be made available for review upon request by local, State, or federal officials. Operators shall make available for review a record of payments received from other sources and each schedule of parent payments due if requested. For the purposes of this Paragraph, program records and forms shall include:

- (1) all enrollment and attendance records, including those required by 10A NCAC 10 .0602;
- (2) private paying parent rates;
- (3) receipts; and
- (4) other fiscal records related to the operator's participation in the Subsidized Child Care Assistance Program, including records related to a child care facility's operating budget.

*History Note: Authority G.S. 143B-153(2a);  
Eff. April 1, 2001;  
Amended Eff. December 1, 2011;  
Readopted Eff. March 1, 2019.*

**10A NCAC 10 .0311 PROVIDER APPEAL TO LOCAL PURCHASING AGENCY**  
**10A NCAC 10 .0312 APPEAL TO DIVISION OF CHILD DEVELOPMENT AND EARLY  
EDUCATION SUBSIDY SERVICES REVIEW PANEL**

*History Note: Authority G.S. 143B-153;  
Eff. December 1, 2011;  
Repealed Eff. March 1, 2019.*

**10A NCAC 10 .0313 TERMINATION OF APPROVAL BASED UPON AN ADMINISTRATIVE  
ACTION ISSUED AGAINST OPERATOR**

(a) Approval to participate in the Subsidized Child Care Assistance Program shall terminate 45 days after issuance of an administrative action revoking or denying a license to operate a child care facility issued pursuant to G.S. 110-90(5) and (9).

(b) An appeal of an administrative action revoking, summarily suspending, or denying a license shall not stay the termination of approval to participate in the state's Subsidized Child Care Assistance Program.

(c) If the owner appeals the termination of approval, the maximum time period during which payments from the state's Subsidized Child Care Assistance Program shall be made 45 days from the date on the notice of the administrative action.

(d) An owner subject to administrative action as described in this Rule shall not be paid with subsidized child care funds for any new children enrolled during the 45 day period after the date on the notice of the administrative action.

(e) A child care owner who has received an administrative action revoking or denying a license by the Division of Child Development and Early Education, or who is currently under summary suspension, shall be ineligible to participate in the state's Subsidized Child Care Assistance Program for the facility subject to the administrative action. This includes facilities that are exempt from licensure pursuant to G.S. 110-106, facilities operating in other states, and facilities certified by the United States Department of Defense.

*History Note: Authority G.S. 143B-153;  
Eff. December 1, 2011;  
Readopted Eff. November 1, 2018.*

## **SECTION .0400 – START-UP FUNDS**

### **10A NCAC 10 .0401    DEFINITION OF START-UP FUNDS**

### **10A NCAC 10 .0402    REVIEW CRITERIA FOR START-UP FUNDS**

*History Note:    Authority G.S. 143B-10; 143B-153(2a);  
Eff. January 16, 1980;  
Amended Eff. April 1, 2001; July 1, 1990; February 1, 1986;  
Repealed Eff. December 1, 2011.*

## **SECTION .0500 - REQUIREMENTS FOR CONTRACTS WITH PRIVATE AGENCIES**

### **10A NCAC 10 .0501 SCOPE**

*History Note: Authority G.S. 143B-153(2a);  
Eff. July 1, 1992;  
Amended Eff. April 1, 2001;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff.  
March 1, 2016;  
Repealed Eff. March 1, 2019.*

### **10A NCAC 10 .0502 APPROVAL**

### **10A NCAC 10 .0503 LENGTH OF CONTRACT**

### **10A NCAC 10 .0504 ADMINISTRATION OF FUNDS**

### **10A NCAC 10 .0505 ADMINISTRATION OF PROGRAM**

### **10A NCAC 10 .0506 RECORDS**

*History Note: Authority G.S. 143B-153(2); 143B-153(2a);  
Eff. July 1, 1992;  
Amended Eff. December 1, 2011; April 1, 2001;  
Repealed Eff. March 1, 2019.*

## **SECTION .0600 - REQUIREMENTS FOR LICENSED CHILD CARE FACILITIES**

### **10A NCAC 10 .0601 STANDARDS FOR FACILITIES PARTICIPATING IN THE SUBSIDIZED CHILD CARE ASSISTANCE PROGRAM**

- (a) An operator that wishes to participate in the Subsidized Child Care Assistance Program shall satisfy all applicable State child care requirements, as codified in G.S. 110-85, et seq. and 10A NCAC 09, and shall enroll in the Subsidized Child Care Assistance Program as set forth in 10A NCAC 10 .0602(a).
- (b) An operator that wishes to participate in the Subsidized Child Care Assistance Program, with the exception of religious-sponsored facilities operating in accordance with G.S. 110-106 and Department of Defense facilities operating in accordance with G.S. 110-106.2, shall hold a North Carolina child care license.
- (c) Out-of-State operators wishing to participate in the Subsidized Child Care Assistance Program shall hold a license to operate a child care facility in the state where they are located.
- (d) The operator of a facility participating in the Subsidized Child Care Assistance Program shall ensure that the facility complies with all applicable provisions of the Civil Rights Act of 1964.

*History Note: Authority G.S. 143B-153(2a);  
Eff. February 1, 1986;  
Amended Eff. April 1, 2001; March 1, 1996; July 1, 1990;  
Readopted Eff. March 1, 2019.*

### **10A NCAC 10 .0602 PARTICIPATION IN THE SUBSIDIZED CHILD CARE ASSISTANCE PROGRAM**

- (a) Owners wishing to participate in the Subsidized Child Care Assistance Program shall:
  - (1) enroll in the State's Subsidized Child Care Assistance Program through the State's automated provider portal located at [providerportal.nc.gov](http://providerportal.nc.gov);
  - (2) enter into and maintain a contract for payment through the State's Subsidized Child Care Assistance Program vendor; and
  - (3) enter into the Subsidized Child Care Assistance Program's Provider Agreement annually.
- (b) For purposes of this Rule, "complete records" shall mean records having an indication of absent or present for each day a child is scheduled to attend the facility and "accurate records" shall mean attendance records with an error rate no greater than 10 percent.
- (c) For purposes of this Rule, "error" shall mean that for each child the operator marks as present for a particular day on attendance sheets submitted through the automated provider portal for purposes of reimbursement from the Subsidized Child Care Assistance Program:
  - (1) neither the daily attendance records required to be kept in accordance with 10A NCAC 09 .0302(d)(3) and 10A NCAC 09 .1721(e)(6) nor the records of arrival and departure times required to be kept in accordance with 10A NCAC 09 .0302(d)(4) and .1721(e)(6) show the child marked present; or
  - (2) either the daily attendance records required to be kept in accordance with 10A NCAC 09 .0302(d)(3) and 10A NCAC 09 .1721(e)(6) or the records of arrival and departure times required to be kept in accordance with 10A NCAC 09 .0302(d)(4) and .1721(e)(6) show the child marked absent.
- (d) For purposes of this Rule, "error rate" shall mean the total number of errors divided by the total number of entries showing the daily attendance of children on attendance sheets submitted through the automated provider portal for the purpose of reimbursement from the Subsidized Child Care Assistance Program.
- (e) For purposes of this Rule, "requirements for participation" in the Subsidized Child Care Assistance Program shall include:
  - (1) maintaining complete and accurate daily attendance records in accordance with 10A NCAC 09 .0302(d)(3) and .1721(e)(6);



- (2) maintaining complete and accurate records of arrival and departure times for each child in accordance with 10A NCAC 09 .0302(d)(4) and .1721(e)(6);
  - (3) submitting accurate records of attendance for each child participating in the Subsidized Child Care Assistance Program to the Subsidized Child Care Assistance Program;
  - (4) maintaining compliance with all of the requirements set forth in this Chapter; and
  - (5) complying with the terms and conditions of the Subsidized Child Care Assistance Program's Provider Agreement.
- (f) To be eligible to participate in the Subsidized Child Care Assistance Program, facilities that are exempt from licensure pursuant to G.S. 110-106 shall comply with all staff orientation and training requirements set forth in 10A NCAC 09 .1101, .1102, and .0304, in accordance with the Child Care and Development Block Grant Act, 42 U.S.C. 9858, et seq.
- (g) Upon the first instance that the Division or the Local Purchasing Agency determines a facility is out of compliance with any requirement for participation the Division shall:
- (1) notify the operator of the non-compliance; and
  - (2) issue a corrective action plan to address the areas of non-compliance and assist the facility to come into compliance; and
  - (3) set a time limit for the operator to complete the corrective action plan depending upon the nature of non-compliance.
- (h) Upon the second instance in a two-year period that the Division or the Local Purchasing Agency determines a facility is out of compliance with any requirement for participation, the operator shall be prohibited from enrolling new children who receive subsidized child care for one year, and the Division shall:
- (1) notify the operator of the non-compliance; and
  - (2) issue a corrective action plan to address the areas of non-compliance and assist the facility to come into compliance; and
  - (3) set a time limit for the operator to complete the corrective action plan depending upon the nature of non-compliance.
- (i) An operator who fails to maintain compliance in accordance with Paragraph (b) of this Rule three times in a two-year period shall be terminated from and permanently ineligible to participate in the Subsidized Child Care Assistance Program.
- (j) If the operator fails to complete the corrective action plan within the required timeframe, the Division shall terminate the owner participation in the Subsidized Child Care Assistance Program and the owner or any operator who is not an owner shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.
- (k) Upon request for review by a local, state, or federal agency representative, the operator of a child care facility shall immediately provide all records pertaining to his or her participation in the state's Subsidized Child Care Assistance Program. These records include:
- (1) daily attendance records kept in accordance with 10A NCAC 09 .0302(d)(3) and .1721(e)(6);
  - (2) records of arrival and departure times for each child kept in accordance with 10A NCAC 09 .0302(d)(4) and .1721(e)(6);
  - (3) records of attendance maintained for purposes of the federal Child and Adult Care Food Program; and
  - (4) any other records that show children's attendance at the facility.
- (l) If the Local Purchasing Agency determines a facility to be out of compliance with any requirement for participation in the Subsidized Child Care Assistance Program, the Local Purchasing Agency shall notify the Division of the noncompliance within five days of its determination.
- (m) An operator may appeal a determination of noncompliance or permanent ineligibility under this Rule as follows:
- (1) pursuant to 10A NCAC 10 .0311 if Local Purchasing Agency makes the determination of non-compliance or permanent ineligibility; or

- (2) pursuant to 10A NCAC 10 .0312 if the Division makes the determination of non-compliance or permanent ineligibility.

*History Note: Authority G.S. 143B-153(2a);  
Eff. February 1, 1986;  
Amended Eff. April 1, 2001; February 1, 1996;  
Emergency Amendment Eff. August 22, 2016;  
Temporary Amendment Eff. October 28, 2016;  
Temporary Amendment Expired Eff. August 12, 2017;  
Readopted Eff. November 1, 2018.*

#### **10A NCAC 10 .0603 APPEALS**

*History Note: Authority G.S. 143B-153(2a); 150B-23;  
Eff. February 1, 1986;  
Amended Eff. April 1, 2001; July 1, 1990;  
Repealed Eff. December 1, 2011.*

## **SECTION .0700 - REQUIREMENTS FOR FAMILY CHILD CARE HOMES**

### **10A NCAC 10 .0701 STANDARDS FOR FAMILY CHILD CARE HOMES PARTICIPATING IN THE SUBSIDIZED CHILD CARE PROGRAM**

*History Note: Authority G.S. 143B-153;  
Eff. January 1, 1985;  
Amended Eff. April 1, 2001; February 1, 1996; July 1, 1990;  
Repealed Eff. March 1, 2019.*

### **10A NCAC 10 .0702 APPROVAL AND CONTINUED PARTICIPATION IN THE SUBSIDIZED CHILD CARE PROGRAM**

*History Note: Authority G.S. 143B-153(2a);  
Eff. January 1, 1988;  
Amended Eff. April 1, 2001; February 1, 1996;  
Emergency Amendment Eff. August 22, 2016;  
Temporary Amendment Eff. October 28, 2016;  
Repealed Eff. November 1, 2018.*

### **10A NCAC 10 .0703 APPEALS**

*History Note: Authority G.S. 143B-153(2a); 150B-23;  
Eff. January 1, 1988;  
Amended Eff. April 1, 2001; July 1, 1990;  
Repealed Eff. December 1, 2011.*

## **SECTION .0800 - REQUIREMENTS FOR NONLICENSED CHILD CARE HOMES**

<b>10A NCAC 10 .0801</b>	<b>DEFINITION</b>
<b>10A NCAC 10 .0802</b>	<b>DIVISION RESPONSIBILITY</b>
<b>10A NCAC 10 .0803</b>	<b>LOCAL PURCHASING AGENCY RESPONSIBILITY</b>
<b>10A NCAC 10 .0804</b>	<b>INITIAL APPROVAL</b>
<b>10A NCAC 10 .0805</b>	<b>MAINTAINING APPROVAL</b>
<b>10A NCAC 10 .0806</b>	<b>PAYMENT REQUIREMENTS</b>
<b>10A NCAC 10 .0807</b>	<b>APPEALS</b>
<b>10A NCAC 10 .0808</b>	<b>APPLICABILITY OF RULES</b>
<b>10A NCAC 10 .0809</b>	<b>PARENT-PROVIDER CHECKLIST</b>
<b>10A NCAC 10 .0810</b>	<b>HEALTH AND SAFETY STANDARDS</b>
<b>10A NCAC 10 .0811</b>	<b>PROVIDER REQUIREMENTS</b>

*History Note: Authority G.S. 110-90.2; 110-90.2(a)(2); 143B-153(2a); 150B-21.6; 45 C.F.R. 98.11(b); 45 C.F.R. 98.40; 45 C.F.R. 98.41; 45 C.F.R. 255.4(c); 45 C.F.R. 257.41; Eff. February 1, 1993; Amended Eff. April 1, 2001; February 1, 1996; February 1, 1994; Expired Eff. April 1, 2016 pursuant to G.S. 150B-21.3A.*

## **SECTION .0900 - GENERAL POLICIES FOR PROVISION OF SUBSIDIZED CHILD CARE ASSISTANCE**

### **10A NCAC 10 .0901 SCOPE**

*History Note: Authority G.S. 143B-153;  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001; February 1, 1996; July 1, 1990;  
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff.  
March 1, 2016;  
Repealed Eff. March 1, 2019.*

### **10A NCAC 10 .0902 METHODS OF SERVICE PROVISION**

#### **10A NCAC 10 .0903 DEFINITION OF SERVICE**

*History Note: Authority G.S. 143B-153;  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001; February 1, 1996;  
Repealed Eff. March 1, 2019.*

### **10A NCAC 10 .0904 AVAILABILITY OF FUNDING**

If the availability of funding is less than the amount needed to serve all eligible children, each Local Purchasing Agency shall establish the priority for serving families. The order of priority shall be stated in writing, approved by the Division in accordance with annual appropriations act and federal law, and the Local Purchasing Agency shall provide a copy of the written order of priority to applicants for child care assistance.

*History Note: Authority G.S. 143B-153; 45 CFR 98.46;  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001; March 1, 1996; February 1, 1994; July 1, 1990;  
Readopted Eff. March 1, 2019.*

### **10A NCAC 10 .0905 SUPPORT FOR EMPLOYMENT AND TRAINING FOR EMPLOYMENT**

(a) The Subsidized Child Care Assistance Program shall pay for child care services provided to support:

- (1) employment of the recipient; and
- (2) training leading to employment of the recipient.

(b) The Subsidized Child Care Assistance Program shall pay for child care services for recipients the Local Purchasing Agency determines are unable to work or to participate in training leading to employment, and who are also incapable of providing care for the child. The Local Purchasing Agency shall document the reasons for this determination in the recipient's record, which may include the following:

- (1) illness;
- (2) disability;
- (3) complications related to pregnancy;
- (4) hospitalization;
- (5) substance abuse treatment; or
- (6) that the recipient is elderly.

(c) If a recipient is already receiving child care services funded through the Subsidized Child Care Assistance Program and is absent from employment, training, or an educational program with arrangements to continue the same employment, training, or educational program, child care services shall continue for up to 90 days. If an absence from work, training, or an educational program extends beyond 90 days, the

Local Purchasing Agency shall determine on the basis of individual circumstances whether child care services shall continue beyond that time period. The Local Purchasing Agency shall document the reasons for such extension in the recipient's record, which may include the following:

- (1) the recipient is on maternity leave and intends to return to work;
- (2) the recipient has been temporarily laid off and the employer has indicated that employment will resume within a month; or
- (3) the recipient works in a high-demand field and is likely to find new employment within a month.

(d) If a recipient is already receiving child care services funded through the Subsidized Child Care Assistance Program and becomes unemployed but is seeking employment, funding for child care services shall be provided for 90 days. Funding for services may be extended if the Local Purchasing Agency determines such extension is warranted, provided the reason for the extension is documented in the recipient's record and may be based upon the following:

- (1) the likelihood of obtaining employment based upon prior job search activities;
- (2) the recipient has a job interview scheduled; or
- (3) the recipient is waiting to hear the results of a job interview.

(e) If a recipient is already receiving child care services funded through the Subsidized Child Care Assistance Program and no longer attends a training or educational program, child care services shall continue to be provided for 90 days after the recipient stops attending the training or educational program. Continuation of funding for services may be extended if the Local Purchasing Agency determines such extension as warranted, provided the reason for the extension is documented in the recipient's record and may be based on:

- (1) recommendations from teaching staff at educational institutions;
- (2) the individual needs and abilities of the recipient;
- (3) whether the recipient has developed career goals; or
- (4) whether the recipient has developed a personal plan for completing training.

(f) For purposes of this Rule, training leading to employment shall include:

- (1) continuation of high school;
- (2) basic education or a high school education or its equivalent in community colleges or technical institutes; and
- (3) post-secondary education or skills training, up to a maximum of 20 months enrollment, but shall not include assistance when the recipient is participating in graduate or post-graduate studies.

*History Note: Authority G.S. 143B-153; 45 CFR 98.21;*

*Eff. July 1, 1983;*

*Amended Eff. June 1, 2016; April 1, 2001; March 1, 1996; July 1, 1990;*

*Readopted Eff. March 1, 2019.*

## **10A NCAC 10 .0906 SUPPORT FOR CHILD PROTECTIVE AND CHILD WELFARE SERVICES**

(a) The Subsidized Child Care Assistance Program shall provide assistance to enable a child to remain in his or her own home while receiving child protective services. The child shall not receive assistance unless he or she is receiving protective services through the local department of social services pursuant to G.S. 7B.

(b) The Subsidized Child Care Assistance Program shall provide assistance to children receiving Child Welfare Services. Child Welfare Services shall mean the protection of a child from abuse, neglect, or dependency or the provision of a safe permanent home for a child as described in G.S. 7B-101; G.S. 7B-300; G.S. 48-1-101; G.S. 108A-14 (11) and (12); G.S. 108A-48; 10A NCAC 70A; or 10A NCAC 70B.

(c) The provisions of this Rule shall not apply to children living in a foster care arrangement.

*History Note: Authority G.S. 143B-153;  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001;  
Readopted Eff. March 1, 2019.*

#### **10A NCAC 10 .0907 SUPPORT FOR CHILDREN WITH OR AT RISK FOR DEVELOPMENTAL DELAYS**

(a) The Subsidized Child Care Assistance Program shall provide assistance to a child who does not meet any eligibility criteria in this Section if the child's emotional, cognitive, social, or physical development is delayed or is at risk of being delayed, in accordance with this Rule.

(b) The Local Purchasing Agency shall document the type of developmental delay or the risk of delay in writing in the recipient's record. Information regarding the delay or risk of delay shall be provided by the child's parent, child care director, teacher, social worker, doctor, or other medical professional; however, medical or psychological reports shall not be required for a determination of eligibility.

(c) In making a determination of eligibility, the Local Purchasing Agency shall consider factors that include whether the child:

- (1) has a severe disability or special needs;
- (2) lives in a situation that inhibits his or her ability to develop normally, including living with elderly or adults with disabilities; and
- (3) would benefit from early intervention in a child care setting that may prevent the child from experiencing serious, ongoing problems later in life.

*History Note: Authority G.S. 143B-153;  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001; July 1, 1990;  
Readopted Eff. March 1, 2019.*

#### **10A NCAC 10 .0908 LIMITATIONS**

*History Note: Authority G.S. 143B-153;  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001; February 1, 1996; July 1, 1990;  
Repealed Eff. March 1, 2019.*

#### **10A NCAC 10 .0909 RECIPIENT CHOICE**

(a) Recipients shall choose a child care facility approved for participation in the Subsidized Child Care Assistance Program pursuant to Section .0600 of these Rules to provide child care services for the recipient's eligible children. The Local Purchasing Agency shall accept the recipient's choice of facility if there is space available in the facility and the child's enrollment will not violate the facility's licensed capacity as set forth in G.S. 110-91(6).

(b) During the eligibility determination, Local Purchasing Agencies shall notify recipients of their right to choose any approved child care facility.

*History Note: Authority G.S. 143B-153; 45 CFR 98.30; 45 CFR 98.31;  
Eff. July 1, 1991;  
Amended Eff. April 1, 2001;  
Readopted Eff. March 1, 2019.*

**10A NCAC 10 .0910 CHILDREN WITH SPECIAL NEEDS**

The Local Purchasing Agency shall have on file an Individualized Education Program (IEP) as defined in G.S. 115C-106.3, an Individualized Family Service Plan (IFSP) as defined in 10A NCAC 27G .0903, a Section 504 Plan as defined in 29 USC 794, or a Person-Centered Plan (PCP) as defined in 10A NCAC 70G .0402 for all children with special needs who have been determined eligible for the Subsidized Child Care Assistance Program that documents the special need or disability in accordance with these Rules.

*History Note: Authority G.S. 143B-153(2a);  
Eff. December 1, 1992;  
Amended Eff. December 1, 2011; April 1, 2001; February 1, 1996;  
Readopted Eff. March 1, 2019.*



## SECTION .1000 - ELIGIBILITY FOR SERVICES

### 10A NCAC 10 .1001 BASIC ELIGIBILITY CRITERIA

An individual shall be eligible to receive subsidized child care services in accordance with Section .0900 of these Rules if:

- (1) he or she meets the requirements in 10A NCAC 10 .1002 and .1003; or
- (2) the service is available without regard to income pursuant to 10A NCAC 09 .1004.

*History Note: Authority G.S. 143B-153;  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001; February 1, 1996; October 1, 1991; July 1, 1990;  
Readopted Eff. March 1, 2019.*

### 10A NCAC 10 .1002 INCOME ELIGIBLE STATUS

(a) For the purpose of this Rule, the term "income unit" means persons who reside in the same household and who are responsible for the financial support of the individual whose eligibility for child care services is being determined.

(b) For the purposes of the rules in this Chapter, "income unit size" means the number of individuals in the income unit, and "gross income of the income unit" means the total amount of the income used to determine child care eligibility.

(c) If an individual meets any of the criteria set forth in 10A NCAC 10 .0905 or .0907, the Local Purchasing Agency shall determine:

- (1) the number of persons in the individual's income unit through the eligibility application in NC FAST or through the eligibility interview process; and
- (2) the amount of gross income available to the income unit in accordance with 10A NCAC 10 .1006.

(d) Individuals who meet any of the criteria set forth in 10A NCAC 10 .0905 or .0907 shall be eligible to receive Subsidized Child Care Services, provided that:

- (1) for initial eligibility and annual redeterminations, the gross income of the income unit:
  - (A) for children ages 0 to 5 years old shall not exceed the state's maximum income eligibility limit of 200 percent of the federal poverty line, as set forth in 42 USC 9902(2) and 82 FR 8831, for the number of persons in that income unit;
  - (B) for children ages 6 to 12 years old shall not exceed the state's maximum income eligibility limit of 133 percent of the federal poverty line, as set forth in 42 USC 9902(2) and 82 FR 8831, for the number of persons in that income unit; or
  - (C) for any child with special needs as defined 10A NCAC 10 .0910 shall not exceed the state's maximum income eligibility limit of 200 percent of the federal poverty line, as set forth in 42 USC 9902(2) and 82 FR 8831, for the number of persons in that income unit.

42 USC 9902(2) and 82 FR 8831 are incorporated by reference including subsequent amendments and editions and are available at no cost at <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap106-sec9902.pdf> and

<https://www.govinfo.gov/content/pkg/FR-2017-01-31/pdf/2017-02076.pdf>.

- (2) for individuals whose income increases during the annual eligibility period, the maximum income eligibility limit for children of all ages and special needs status shall not exceed 85 percent of the state median income for that income unit size.

(e) The following individuals living in a residence shall be separate income units for the purposes of determining eligibility for child care services:

- (1) biological and adoptive parents and their minor children. A step-parent shall be included in the income unit with his or her spouse if the children in need of care include the step-parent and spouse's biological or adoptive children and step-siblings;
  - (2) a minor parent and his or her children;
  - (3) each person 18 years of age or older; and
  - (4) each child living with anyone other than their biological or adoptive parents.
- (f) Income to be considered when computing the gross income of the income unit shall include:
- (1) gross earned wages or salary, which are defined as earnings received for work performed as an employee, including wages, salary, commissions, tips, piece-rate payments, and cash bonuses earned, before any deductions such as for taxes, bonds, pensions, and union dues;
  - (2) gross income from taxable self-employment income after deductions made for business expenses and any other expense that is deductible for purposes of federal or state tax returns;
  - (3) Social Security benefits including Social Security pensions, survivors' benefits, and permanent disability insurance payments;
  - (4) dividends, interest on savings or bonds, income from estates or trusts, royalties, and adjusted gross rental income on houses, stores, or other property;
  - (5) pensions and annuities paid by an employer or union or through an insurance company;
  - (6) workers' compensation;
  - (7) unemployment insurance benefits;
  - (8) alimony including direct and indirect payments such as rent and utility payments;
  - (9) child support, direct or indirect, such as health care costs, school tuition, camps, lessons, and afterschool activities;
  - (10) pensions paid to veterans or survivors of deceased veterans;
  - (11) On-the-Job Training (OJT) payments;
  - (12) Job Training Partnership Act (JTPA) payments made to an adult;
  - (13) AmeriCorps stipend;
  - (14) the taxable amount of Armed Forces pay;
  - (15) work release payments;
  - (16) Cherokee Tribal Per Capita Income paid to adult family members;
  - (17) work-study payments, if the income is from a program not administered under Title IV of the Higher Education Act or the Bureau of Indian Affairs; and
  - (18) recurring cash contributions paid to the parent, such as severance pay or child support not paid pursuant to a written agreement or court-ordered arrangement.
- (g) The following sources of income shall not be counted when computing the gross income of the income unit:
- (1) Work First Family Assistance;
  - (2) Supplemental Security Income (SSI);
  - (3) non-recurring lump sum payments such as Social Security benefits, workers' compensation, alimony, veteran's benefits, and housing assistance paid to or on behalf of a family member by HUD;
  - (4) foster care assistance payments;
  - (5) Adoption Assistance payments;
  - (6) payments or trust funds from the Indian Claims Commission;
  - (7) payments from the Alaska Native Claims Settlement Act;
  - (8) income from sale of personal assets including stocks, bonds, house, car, and insurance;
  - (9) money borrowed;
  - (10) tax refunds, including Earned Income Tax Credits or Dependent Care Credits;
  - (11) gifts or contributions, including cash, monetary gifts, and charitable contributions given on a regular basis to meet the recipient's needs;

- (12) non-cash contributions from non-legally responsible adults, such as food, clothing, furniture, or non-cash military benefits such as insurance;
- (13) Emergency Assistance, Low Income Energy Assistance Program, Crisis Intervention Program, General Assistance, or CP&L Share Program payments;
- (14) Section VIII housing subsidy;
- (15) capital gains;
- (16) the value of food stamp benefits allotted under the Food Stamp Act of 1977;
- (17) free and reduced lunch program;
- (18) food subsidy programs;
- (19) Relocation or Acquisition Act payments;
- (20) earnings of a dependent child under 18 years of age, unless the child is a minor parent of a child needing child care;
- (21) loans, grants, scholarships, and money received to pay for job training;
- (22) home produce utilized for household consumption;
- (23) Volunteers in Service to America (VISTA) earnings;
- (24) all subsidized housing and housing allotments, including military housing allotments. If rent is provided by an organization on a recurring basis, it shall be counted as income;
- (25) money received from an employer as an employee benefit for child care; and
- (26) work-study payments, if the income is from the College Work-Study Program administered under Title IV of the Higher Education Act or the Bureau of Indian Affairs.

*History Note: Authority G.S. 143B-153; 42 USC 9902; 45 CFR 98.20;  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001; February 1, 1996; July 1, 1992; October 1, 1991;  
Readopted Eff. March 1, 2019.*

#### **10A NCAC 10 .1003 INCOME ELIGIBILITY LEVELS**

*History Note: Authority G.S. 143B-153;  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001; July 1, 1992;  
Repealed Eff. March 1, 2019.*

#### **10A NCAC 10 .1004 WITHOUT REGARD TO INCOME**

The Subsidized Child Care Assistance Program shall provide assistance without regard to income for:

- (1) child care services that are provided in conjunction with protective services as described in 10A NCAC 10 .0906(a);
- (2) children receiving foster care services who are in the custody of the county department of social services and are residing in licensed foster care homes or in the care of adults other than their parents; and
- (3) child care services that are provided to a child receiving Child Welfare Services as described in 10A NCAC 10 .0906(b).

*History Note: Authority G.S. 143B-153(2a);  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001; February 1, 1996; February 1, 1986;  
Readopted Eff. March 1, 2019.*

## **10A NCAC 10 .1005 RESPONSIBILITY FOR ELIGIBILITY DETERMINATION**

*History Note: Authority G.S. 143B-153;  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001; February 1, 1996;  
Repealed Eff. March 1, 2019.*

## **10A NCAC 10 .1006 VERIFICATION OF INCOME**

(a) An individual who applies for child care services shall provide to the Local Purchasing Agency verification of the amount and sources of his or her countable income as set forth in 10A NCAC 10 .1002.

The amount and source of income shall be verified by one of the following:

- (1) a copy of a source document, such as wage stubs, pay statements, and award letters;
- (2) identification of an existing agency record confirming the required information; or
- (3) electronic verification through Online Verification Service (OVS) within NC FAST as defined in 10A NCAC 10 .0102.

(b) If the Local Purchasing Agency cannot verify the recipient's income using the methods described in Paragraph (a) of this Rule, then the amount and source of income shall be verified by one of the following:

- (1) the recipient shall provide a written statement of the amount and sources of their income to the Local Purchasing Agency; or
- (2) the Local Purchasing Agency shall confirm sources of income through a telephone conversation or email communication with the source of the income.

*History Note: Authority G.S. 143B-153;  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001;  
Readopted Eff. March 1, 2019.*

## **10A NCAC 10 .1007 REQUIREMENTS FOR DETERMINATION AND REDETERMINATION OF ELIGIBILITY**

(a) The Local Purchasing Agency shall determine initial eligibility, in accordance with Sections .0900 and .1000 of this Chapter, and shall redetermine eligibility every 12 months thereafter.

(b) If the Local Purchasing Agency determines that a recipient is eligible, the recipient shall remain eligible for the 12 month eligibility period unless:

- (1) the recipient ceases to be employed, in training leading to employment, or in an educational program, as described in 10A NCAC 10 .0905, for more than 90 days;
- (2) the recipient changes residency to outside the State;
- (3) the recipient's income exceeds 85 percent of the State Median Income; or
- (4) the Local Purchasing Agency or the Division issues the recipient a sanction for fraudulent misrepresentation in accordance with 10A NCAC 10 .0308.

(c) If the Local Purchasing Agency, upon redetermination, determines that the family exceeds the State's income eligibility limits, the family shall continue to receive subsidized child care services for 12 months if their income is at or below the federal income limit of 85 percent of the State Median Income.

(d) Annual federal income limits shall be determined in accordance with the U.S. Federal Poverty Guidelines issued by the U.S. Department of Health and Human Services, incorporated by reference including subsequent amendments and editions. A copy of these guidelines are available free of charge at <http://aspe.hhs.gov/poverty/index.cfm>.

*History Note: Authority G.S. 143B-153; 45 CFR 98.21(a)(1); 45 CFR 98.21(b)(1);  
Eff. July 1, 1983;  
Amended Eff. June 1, 2016; April 1, 2001;  
Readopted Eff. March 1, 2019.*

## **SECTION .1100 - RECIPIENT FEES FOR CHILD CARE SERVICES**

### **10A NCAC 10 .1101 GENERAL RECIPIENT FEE POLICY**

(a) Recipient fees for child care services shall be 10 percent of the income unit's gross monthly income as set forth in 10A NCAC 10 .1002; however, no fees shall be charged to a recipient if child care services are provided in the following circumstances:

- (1) if child care services are provided in conjunction with protective services as described in 10A NCAC 10 .0906(a);
- (2) if child care services are provided to a child receiving Child Welfare Services as described in 10A NCAC 10 .0906(b); or
- (3) if a child with no income is living with someone other than his or her biological or adoptive parent or is living with someone who does not have court-ordered financial responsibility.

(b) Except as provided in Paragraph (a) of this Rule, the recipient shall be assessed a fee for child care services.

*History Note: Authority G.S. 143B-153(2a);  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001; July 1, 1992; July 1, 1990; February 1, 1986;  
Readopted Eff. March 1, 2019.*

### **10A NCAC 10 .1102 AMOUNT AND COLLECTION OF RECIPIENT FEES**

(a) The amount of fees charged to a recipient shall be in accordance with the annual appropriations act.

(b) The child care provider shall collect recipient fees on a monthly basis.

*History Note: Authority G.S. 143B-153;  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001; July 1, 1990;  
Readopted Eff. March 1, 2019.*

### **10A NCAC 10 .1103 ADJUSTMENTS IN FEES**

(a) If recipient medical expenses exceed 10 percent of a recipient's gross income as set forth in 10A NCAC 10 .1002 in any eligibility period, the recipient's fee shall be reassessed based on the recipient's adjusted income. The recipient's income shall be adjusted by deducting the amount of medical expenses that exceed 10 percent of the recipient's gross income.

(b) If the plan of care is for less than a full day, the recipient fee shall be assessed in accordance with the annual appropriations act.

*History Note: Authority G.S. 143B-153;  
Eff. July 1, 1983;  
Amended Eff. April 1, 2001; December 1, 1992; July 1, 1992; July 1, 1990;  
Readopted Eff. March 1, 2019.*

## **SECTION .1200 – APPEALS**

### **10A NCAC 10 .1201 DEFINITIONS**

In addition to the terms defined in G.S. 110-86 and in 10A NCAC 10 .0102, the following definitions shall apply to the terms used in this Section:

- (1) "Administrative Review Decision" means the decision made by the State Subsidy Services Appeals Panel that is made after review and analysis of documentation related to an appeal pursuant to this Section.
- (2) "File or Filing" means personal delivery, delivery by certified mail, or delivery by overnight express mailed to the current Division Director or the Subsidy Appeals Coordinator, North Carolina Division of Child Development and Early Education, 2201 Mail Service Center, Raleigh, NC 27699-2200.
- (3) "Initial Review" means the review by the Local Purchasing Agency of the operator's appeal.
- (4) "Local Appeal Hearing" means a hearing held by a hearing officer assigned by the Local Purchasing Agency after the Initial Review.
- (5) "State Subsidy Services Appeals Panel" or "Panel" means the North Carolina Division of Child Development and Early Education internal review panel.

*History Note: Authority G.S. 108A-79; 143B-153;  
Eff. March 1, 2019.*

### **10A NCAC 10 .1202 NOTICE**

Notice shall be given by one of the methods for service of process pursuant to G.S. 1A-1, Rule 4(j) or Rule 4(j3). If given by registered or certified mail, by signature confirmation as provided by the United States Postal Service, or by designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2) with delivery receipt, notice shall be deemed to have been given on the delivery date appearing on the return receipt, copy of the proof of delivery provided by the United States Postal Service, or delivery receipt. If notice cannot be accomplished pursuant to G.S. 1A-1, Rule 4(j) or Rule 4(j3), notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

*History Note: Authority G.S. 143B-153;  
Eff. March 1, 2019.*

### **10A NCAC 10 .1203 FILING**

For purposes of this Chapter, the following apply:

- (1) A document or paper shall be deemed filed as of the date it is delivered to the Division Director or the Subsidy Appeals Coordinator.
- (2) Filings shall be denied under the following circumstances:
  - (a) the filing is not delivered as set forth in Item (1) of this Rule; or
  - (b) the filing fails to comply with the Rules of this Section.

*History Note: Authority G.S. 143B-153;  
Eff. March 1, 2019.*

### **10A NCAC 10 .1204 APPEAL TO THE LOCAL PURCHASING AGENCY**

(a) Appeals by recipients from services determinations pursuant to Section .1000 of this Chapter, changes in recipient fees pursuant to Section .1100 of this Chapter, terminations of payment pursuant to 10A NCAC 10 .1007, or a sanctions issued by the Local Purchasing Agency in accordance with 10A NCAC 10 .0308 shall be made in accordance with G.S. 108A-79.

(b) Procedures for an operator to appeal to the Local Purchasing Agency are as follows:

- (1) An operator wishing to contest an action shall contact the Local Purchasing Agency in writing to request an initial review. Requests shall be made within 30 calendar days after the date of the Local Purchasing Agency action.
- (2) The Local Purchasing Agency shall make a determination on the initial review within 10 business days of the request for an initial review. Within 30 calendar days of notice of the determination of the initial review by the Local Purchasing Agency, the operator may request a local appeal hearing by the Local Purchasing Agency.
- (3) The local appeal hearing shall be held within five business days of receipt of the request for a hearing. The Local Purchasing Agency shall grant a delay of up to 10 additional business days at the written request of the operator, but in no event shall the local appeal hearing be held more than 15 business days after the receipt of the request for a hearing.
- (4) The Local Purchasing Agency shall serve a written statement of decision within 10 business days following the local hearing. The decision shall include the facts and conclusions that support the determination by the Local Purchasing Agency.
- (5) The Local Purchasing Agency shall include with its written statement of decision instructions for appealing its decision in accordance with this Rule.
- (6) If the operator is not satisfied with the final decision of the Local Purchasing Agency, he or she may appeal to the State Subsidy Services Appeals Panel by filing a notice of appeal within 30 calendar days of receipt of the written statement of decision in accordance with this Rule.

*History Note: Authority G.S. 143B-153; 108A-79;  
Eff. March 1, 2019.*

#### **10A NCAC 10 .1205 OPERATOR APPEAL TO DIVISION OF CHILD DEVELOPMENT AND EARLY EDUCATION**

(a) The following persons may appeal a decision of a Local Purchasing Agency or the Division to the Panel within 15 calendar days after having exhausted the appeals process at the appropriate Local Purchasing Agency or within 15 calendar days after the Division takes action as described in Subparagraphs (2) and (3) of this Paragraph:

- (1) an operator to whom a Local Purchasing Agency has issued a sanction pursuant to 10A NCAC 10 .0308;
- (2) an operator whom a Local Purchasing Agency or the Division has failed to approve for participation in or has terminated participation from the Subsidized Child Care Assistance Program pursuant to Section .0600 of this Chapter; or
- (3) an operator contesting the determination of an overpayment pursuant to 10A NCAC 10 .0309.

(b) Upon notification of an appeal filed pursuant to this Section, the Local Purchasing Agency shall, within five business days of the date of notification, forward the appeal record to the Division Director or Subsidy Appeals Coordinator, with a copy to the appellant, consisting of the following:

- (1) a copy of its final decision;
- (2) the signed agreement between the Local Purchasing Agency and the operator, where applicable; and
- (3) all supplementary documentation considered during the local appeals process.

(c) The Panel shall complete its review and notify the appealing party and the Local Purchasing Agency of its decision in writing within 30 business days of the Panel's receipt of the appeal record as follows:

- (1) the decision shall include the facts and conclusions that support the determination by the Panel; or

- (2) the decision may be delayed up to an additional 15 business days if the Panel lacks sufficient information to render a decision at the initial administrative review. The Panel may request additional information from the Local Purchasing Agency or the operator.
- (d) The appealing party may appeal the administrative review decision by filing a petition for a contested case hearing pursuant to G.S. 150B-23 and in accordance with G.S. 110-94. Appeals from the Panel shall be filed within 30 calendar days of notice of the Panel's decision, in accordance with G.S. 150B-23(f).
- (e) The administrative review decision may direct a Local Purchasing Agency to take an action or reverse an action based upon its review of the record as set forth in Paragraph (b) of this Rule.
- (f) An operator may appeal a final determination pursuant to 10A NCAC 10 .0308(k) by filing a petition for a contested case hearing pursuant to G.S. 150B-23 and in accordance with G.S. 110-94.

*History Note: Authority G.S. 143B-153;  
Eff. March 1, 2019.*